

# **FUNDING ONTARIO'S WORKPLACE SAFETY AND INSURANCE SYSTEM:**

## **A GREEN PAPER FOR PUBLIC DISCUSSION**

**ISSUED BY THE WSIB FUNDING REVIEW**

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**H.W. Arthurs  
Chair**

## Funding Ontario's WSIB

“Employers want low premium levels while workers want high benefit-payment levels. These competing interests influence benefits, coverage, and premium rates, which can have a negative impact on the size and growth of the UFL. It is incumbent on the WSIB and the Government to try to balance such views against the need to maintain financial stability.”

*Annual Report of the Auditor General of Ontario (2009), page 315*

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# INTRODUCTION

### The purpose of this Green Paper and why you should read it

This Green Paper is designed to open up an informed public conversation about the future funding of Ontario's workplace safety and insurance system. Individual Ontarians are invited to participate in this conversation, along with stakeholder organizations representing their concerns, and experts in the field of workplace accident insurance and compensation systems.

If you work in Ontario, if you or anyone you know has experienced or might experience a workplace injury or occupational disease, if you are an employer who pays premiums to the Workplace Safety and Insurance Board (WSIB), if you are a citizen concerned about good public policy and the financial viability of Ontario's public institutions you should read this paper and join the conversation.

Your views are important, encouraged and most welcome but please remember that the Funding Review must focus on the funding and related issues assigned to it. Other concerns about workplace safety and insurance will not be examined.

### The independent Funding Review

This Green Paper has been prepared by the independent Funding Review appointed by the Ontario Government, at the request of the WSIB, to make recommendations concerning that agency's financial future. The Review is being chaired by Professor Harry Arthurs who has undertaken similar independent inquiries for both the federal and provincial governments, most recently a review of Ontario's workplace pension system.

An Advisory Panel of four distinguished and knowledgeable Ontarians, with diverse backgrounds, will assist Professor Arthurs: Maureen Farrow, Buzz Hargrove, John O'Grady and John Tory. His biography and theirs, the WSIB's announcement of the establishment of the Funding Review and other relevant information may be found at [www.wsibfundingreview.ca](http://www.wsibfundingreview.ca).

The Funding Review seeks the views of all interested participants directly online, through written submissions, in direct discussions with stakeholder groups, and at public hearings which will be held across the province. After considering all the evidence and arguments it receives, the Funding Review will make recommendations to the WSIB in order to help it find its way towards a more stable financial future.

### Why a Funding Review? What's the problem?

The WSIB administers no-fault, collective liability insurance for Ontario employers and their workers. At the moment, its projected financial commitments to injured and ill workers, and survivors, add up to considerably more than the assets it has on hand and the revenues it can anticipate collecting. This is called an "unfunded liability" (UFL). The UFL is big. According to the WSIB's 2009 Report, it was about \$11.7 billion.

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The Funding Review will look at how the UFL developed, how serious a risk it represents to the WSIB system, and what might be done to minimize or eliminate that risk.

### Six key issues the Funding Review will address

The Funding Review has been asked to gather public, stakeholder and expert input on six specific issues relating to the WSIB's financial situation:

1. **Funding:** What is full funding? What should the WSIB set as its funding target? What is a reasonable time frame for the WSIB to reach its funding target?
2. **Premium rates:** Is the current WSIB premium rate setting methodology appropriate? What changes would improve it to ensure that premium revenue covers costs? Should premium rates increase until the WSIB's funding target is reached?
3. **Rate groups:** Is WSIB's rate group structure appropriate, given the principle of collective, no fault liability? What opportunities exist to simplify the rate group structure?
4. **Employer incentives:** Is the present design and operation of these programs appropriate? What alternatives exist to promote increased safety in the workplace, fairness in insurance costs to the employer, and incentives to employ injured workers?
5. **Occupational disease claims:** How should the insurance fund treat occupational disease claims? Should they be a collective liability or charged back to specific employers? Should the WSIB establish a special fund for occupational disease claims?
6. **Benefits indexation:** What level of inflation protection is fair for partially disabled workers?

***Background information on each of these issues is provided below. Please read on!***

### Issues the Funding Review won't address

The Funding Review will be limited to the six specific issues set out above. It does not have broad authority to examine other issues confronting the WSIB, such as its administrative practices and costs. However, the WSIB has already adopted various initiatives to manage its costs more effectively, and additional measures are being investigated either directly by the WSIB or through its recently launched Value for Money Audit. Similarly, while the Funding Review will look at indexation of benefits provided to partially disabled workers, it has no authority to review benefit issues more generally.

If you wish to address issues outside the scope of the Funding Review, please submit your concerns and questions directly to the WSIB at [www.wsib.on.ca](http://www.wsib.on.ca).

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### How to find out more about the WSIB's financial situation, and to participate in the Funding Review

The WSIB is the repository of much relevant information concerning Ontario's workers' compensation system. It has provided the data cited in this Green Paper, and will continue to provide the Funding Review with information upon request. The Funding Review in turn will analyze information provided by the WSIB and gathered through its own efforts, and post as much of that analysis as possible online. This should assist interested persons and organizations to better understand the issues and to prepare submissions to the Funding Review.

The Funding Review will be conducting public hearings across the province in the spring of 2011. Dates, locations and other details of the hearings will be published in local newspapers and advertised on the Funding Review's website well in advance.

If you plan to make a formal presentation at the hearings, please contact us to reserve a time and place for your presentation. Also, please supply written and electronic copies of your submission no later than two weeks before your hearing date. You may email your presentation or submission to: [hearings@wsibfundingreview.ca](mailto:hearings@wsibfundingreview.ca). Alternatively, if you simply wish to comment on one of the six topics we are studying, but not to submit a formal brief or to appear in person at the public hearings, you may do so at any time prior to **June 15, 2011**. Please send an email to: [submissions@wsibfundingreview.ca](mailto:submissions@wsibfundingreview.ca).

Comments and submissions received by the Funding Review that deal with matters outside its scope will be noted and forwarded directly to the WSIB.

If you want further information about the Funding Review, please log on to our website: [www.wsibfundingreview.ca](http://www.wsibfundingreview.ca). Just open the relevant tab and follow the instructions. You can also find important documents and other information about the WSIB's financial situation on the Funding Review's website.

If you prefer to contact us by regular mail, our address is:

**WSIB Funding Review  
Suite 2201, 200 Front Street West  
Toronto, ON M5V 3J1**

You can also reach us at:

**416 344 5930** (telephone) or **416 344 5700** (fax)

# GENERAL BACKGROUND

### The WSIB and its mandate

Ontario's WSIB is a statutory corporation responsible for administering the *Workplace Safety and Insurance Act (WSIA)*.

The *WSIA* establishes a no-fault insurance scheme that provides benefits to workers who experience workplace injuries or contract occupational diseases. It covers some 240,000 employers who collectively employ about 4.7 million employees — about 70% of Ontario's workforce, but a far lower percentage than is covered in other provinces. Most of those employers pay insurance premiums to the WSIB ("Schedule 1" employers). Some are self-insured; they reimburse the WSIB for benefits received by their workers ("Schedule 2" employers — mostly municipalities, airlines and railways). But an estimated 30% of Ontario's workforce is not covered under the *WSIA* at all.

The *WSIA* system of collective financing and liability provides compensation for injured workers and their families while spreading individual claim costs among the employers insured under Schedule 1. Similar schemes are in force in every Canadian province and territory.

Under its legislative mandate, the WSIB:

- provides comprehensive disability benefits for workers who suffer from a work-related injury or occupational disease;
- pays survivor benefits to a worker's immediate family in the event of a work-related fatality or occupational disease;
- manages and funds the provision of quality health care; and
- supplies retraining and other services to assist in the early and safe return to work of injured workers.

Under this system — which has operated in Ontario for almost 100 years — workers give up their right to sue their employers for work-related injuries or occupational diseases, but in return are guaranteed benefits for eligible claims. Insured employers, for their part, are protected from potentially expensive lawsuits in exchange for collectively financing the program through the payment of premiums.

The system is essentially self-financing. Apart from employer premiums, its only additional revenue comes from investing the premiums not required to meet its costs in any given year. The WSIB receives no funding from the Government of Ontario. In fact, in 2009 it provided \$227 million in financial support to external agencies: to the Ministry of Labour for the administration of the *Occupational Health and Safety Act*, for the Offices of the Worker and Employer Advisors (who assist their constituents in their dealings with the WSIB) and for other legislated obligations, as well as to external researchers and to a network of Health and Safety Associations. In addition, the WSIB reimbursed the Government about \$45 million for doctors' services provided to injured workers through OHIP and paid an estimated \$100 million in hospital and other medical expenses for injured workers that

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would have been covered by OHIP if their injuries had been sustained off the job rather than on.

As the following sections of the Green Paper will explain in greater detail, these funding arrangements confront the WSIB with significant challenges. It must honour its commitments to ill and injured workers, comply with its statutory duty to maintain “sufficient” funding to meet future obligations, keep employer insurance premiums equitable and affordable, and meet public expectations of administrative efficiency and financial responsibility. The WSIB’s difficulties in meeting these sometimes contradictory challenges help to explain the emergence of the UFL.

### How did the UFL problem arise?

As noted, like all workers’ compensation systems across Canada, Ontario’s WSIB is funded by premiums paid by employers. Ideally, revenue from premiums (along with returns from investments) should be sufficient both to meet the current costs of the system and to ensure that future long-term commitments to workers will be honoured as they come due. However, over the past decade or so, the WSIB’s costs have frequently exceeded its revenues.

Various explanations have been advanced for the WSIB’s persistent and cumulative funding shortfalls, including:

- health care and other benefit costs have been rising steadily;
- premiums have not kept pace with rising costs and new commitments;
- employers resist paying higher premiums;
- negative economic conditions make the WSIB and the Ontario Government reluctant to impose higher premiums;
- experienced-based premium-setting — premium rebates for employers with “good” records, premium surcharges for those with “bad” records — have drained funds from the system;
- the WSIB’s investment portfolio has experienced poorer-than-anticipated results, largely due to the collapse of global financial markets in 2008;
- stakeholders including employers, health care providers and workers abuse the system;
- the WSIB operates inefficiently;
- all of the foregoing.

However, whatever the cause of the UFL, one fact is beyond dispute: the WSIB’s annual revenue — premiums paid by employers plus the return on its investments — have been insufficient to meet operating and other costs and pay benefits to those who are legally entitled to them. In 2009 alone, the insufficiency amounted to some \$850 million. Over the years, this recurring shortfall has accumulated to the point where the WSIB doesn’t have sufficient funds to cover the full future cost of claims that are already in the system (old claims) as well as those that are being added each year (new claims).

The resulting UFL is the main problem the Funding Review has been set up to investigate.

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### How big is the problem? What's the worst-case scenario?

According to the WSIB's own estimates, confirmed by the Provincial Auditor, by the end of 2009, the UFL stood at \$11.7 billion. The funding ratio (the ratio of total assets to total liabilities) for Ontario's WSIB is about 54%. By contrast, most other large Canadian workplace insurance systems are at or near, or even above, 100% – which means they have enough funds to pay all benefit entitlements and expenses as these become due.

The *2009 Report of Ontario's Auditor General* has indicated that the UFL poses a threat to the long-term viability of the province's workplace insurance system. Specifically, if left unaddressed the UFL may one day put the WSIB and the Ontario Government in the position of having to reduce the benefit levels provided to workers and their families; significantly ramp up premiums that must be paid by employers; or both.

### What's being done by the WSIB to address its UFL?

Efforts to avoid such undesirable outcomes have been underway since the mid-1980s, when the WSIB instituted a plan designed to eliminate the UFL by 2014. However, a convergence of factors — including some of those listed above — made that plan unachievable. The WSIB has therefore recently announced several new initiatives designed to reduce its annual deficit and, ultimately, the UFL. One of those initiatives is this independent Funding Review. Others include:

- administrative measures designed to provide better service, rationalize functions and reduce costs;
- a Value for Money Audit to examine the efficiency and effectiveness of its claims administration processes;
- a new investment strategy designed to produce a decent and dependable rate of return (an average annual rate of 7% over 15 years);
- new approaches to return to work, health care provision and other WSIB programs, which are intended to reduce overall costs without reducing the level of benefits to which ill and injured workers are entitled.

(More detailed information about the WSIB's initiatives can be found in its News Release of September 30, 2010 at [www.wsib.on.ca](http://www.wsib.on.ca). To find the News Release, just click on the What's Happening tab).

However whatever the importance of the WSIB's other initiatives, the Funding Review cannot examine them on their individual merits. They are mentioned in this Green Paper for two reasons. First, it is important for readers to fully understand the context within which the Funding Review is being conducted. Second, it is conceivable that cost savings and revenue enhancements generated by the WSIB initiatives — in combination and over time — might significantly reduce or eliminate the UFL which is, of course, the primary focus of the Review.

# AN INTRODUCTION TO THE KEY ISSUES IN THIS REVIEW

## Issue 1: Funding

The WSIB maintains an insurance fund with which to pay claims and all expenses. A plan that is “fully funded”, one that has a “funding ratio” of 100% or more, would have sufficient assets on hand in its insurance fund at any given moment to meet all its future obligations. However, the *WSIA* does not presently require the WSIB to maintain its insurance fund at that level; nor does the existing Memorandum of Understanding (MOU) between the Minister of Labour and the WSIB; nor does any resolution passed to date by the WSIB's Board of Directors.

In fact, until very recently the *WSIA* specifically relieved the WSIB of any specific obligation to maintain full funding:

*The Board is not required to maintain a reserve fund that at all times equals the capitalized value of the benefits that will become due in future years, unless the Board is of the opinion that it is necessary to do so in order to comply with subsections 96 (2) and (3). [former s. 97(2) repealed in December 2010*

By contrast, all other Canadian jurisdictions (except Nova Scotia) explicitly require their workers' compensation schemes to maintain at least full funding. As a result, in 2007 the average funding ratio for similar schemes across Canada (excluding Ontario) was 114%, while Ontario's was 66.4%. More remarkably, at the end of 2009 — a year after the investment market meltdown of 2008 — the cross-Canada funding average was about 95% and it has risen since. By contrast, the WSIB's funding ratio was still only about 54%. This means that the WSIB had just over half as much money available to meet its future financial obligations as Canada's other workers' compensation schemes.

Most Canadian workers' compensation schemes — including Ontario's — are permitted to establish special reserve funds to meet special expenses such as losses arising from “a disaster or other circumstances” [present section 98(1)]. The purpose of such funds is to avoid burdening employers with a massive unexpected liability which would require a corresponding huge increase in their premium rate. For example, Alberta's Occupational Disease (OD) Reserve provides for costs that may arise from latent occupational diseases where a causal link to the workplace has not yet been scientifically established but where such a link may be established in the future. The WSIB has never created an OD reserve although it has legal power to do so.

Clearly, then, the WSIB's approach to funding has diverged considerably from that of similar bodies across the country in several important respects. Instead of fully funding its costs and developing a reserve fund that equals or exceeds the anticipated cost of future benefits, the WSIB often runs a deficit on current activities and has consistently set aside substantially less than the amount needed to fully pay future benefits arising from the claims it has already found compensable. As noted earlier, the result is that the WSIB has a UFL estimated at \$11.7 billion in 2009 — an increase from \$6 billion only three years earlier.

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How then to determine the right level of funding for the WSIB? Under previous legislation, the WSIB was subject to two obligations:

*a duty to maintain the insurance fund so that it is sufficient to make the required payments under the insurance plan as they become due.* [former s. 96(2)]

and

*a duty to maintain the insurance fund so as not to burden unduly or unfairly any class of Schedule I employers in future years with payments under the insurance plan in respect of accidents in previous years.* [present s. 96(3)]

In his 2009 report, the Auditor General concluded that the UFL violated the latter obligation and constituted a clear contravention of the spirit and intent of the legislation.

In response to the Auditor General's report, the Ontario Government passed (but not yet proclaimed in force) several amendments to the *WSIA* in December 2010 [Bill 135, schedule 21]. These amendments will clarify — some say alter — the WSIB's funding obligations.

First, Bill 135 repealed section 97(2), quoted above, which relieves the WSIB of any obligation to maintain a fund equal to the capitalized value of future benefits. While no explicit requirement for “full” or 100% funding has been introduced in its place, the WSIB will now be bound by somewhat firmer funding guidelines. Under the new law, the WSIB is required:

*... to maintain the insurance fund so that the amount of the fund is sufficient to allow the Board to meet its obligations ... to make payments under the insurance plan for current benefits as they become due and to provide for future benefits.* [new s. 96(3)]

Moreover, the WSIB is now forbidden:

*... to burden unduly or unfairly any class of Schedule 1 employers with payments,*

*(a) in any year in respect of current benefits; or*

*(b) in future years in respect of future benefits* [new s. 96(5)]

The meaning of this latter section is somewhat unclear. Depending on the interpretation of “unduly”, if the WSIB cannot “burden” either current or future employers or both, it may find itself thwarted in its efforts to improve its funding ratio.

Taken together, however, these amendments seemingly intend that the WSIB should match its current income more closely to its current expenditures. Still, because they do not require “full” funding, the WSIB will retain a margin of discretion in deciding how, and to what extent, to fund its obligations.

Consequently, the most important features of the legislation seem to be those that make the WSIB more accountable for the way in which this discretion is exercised and provide remedial measures in the event that the WSIB funding policy “unduly or unfairly” burdens employers or generates “insufficient” funding to meet the WSIB's present and future obligations:

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*... if the fund is insufficient... the Board shall develop and implement a plan to achieve sufficiency that complies with the prescribed requirements ... [and] submit the plan to the Minister ... [new s. 96.1(1)]*

If the Minister determines that the insurance fund is unlikely to become “sufficient” under the WSIB’s plan, the Minister may submit the plan for review by an actuary or auditor. The WSIB must then revise its funding plan to conform to the recommendations of the review [new ss. 96.1(6)-(8), 96.2]. Moreover, the Government may adopt regulations that prescribe in detail the financial targets, time limits and other conditions to which the WSIB’s funding plan must conform [new s. 100].

Finally, a section which previously allowed the Ontario Government to make interim loans to the WSIB has been repealed [former s. 100]. While such loans have not actually been provided during the recent history of the WSIB (if ever), the removal of this “backstop” does place additional pressure on the WSIB to ensure that it has “sufficient” funds on hand to meet its obligations.

In short, under the 2010 amendments to the *WSIA* the vague statutory requirement that the WSIB’s insurance fund be “sufficient” remains formally unchanged. However, that requirement will almost certainly acquire a more precise meaning, as new regulations are enacted, new sufficiency plans are adopted and reviewed, and new practical pressures are brought to bear on the WSIB.

What level of funding, then, should be regarded as “sufficient” by the Government, the WSIB, reviewing auditors or actuaries and the Auditor General?

One view, strongly held by some, is that only “full” funding — at least 100% of potential financial requirements — can be deemed “sufficient”. Another is that prudence dictates an even higher funding ratio to ensure that the WSIB enjoys a safety margin that will enable it to respond to unpredictable financial challenges such as a decline in the value of its investments or the unexpected emergence of a cluster of occupational disease claims.

On the other hand, some knowledgeable and interested parties will undoubtedly (and accurately) point out that throughout its history, the WSIB has consistently met its financial obligations, even while funded at much less than 100%. On this argument something considerably less than 100% funding is demonstrably “sufficient”. Indeed, advocates of this position will likely contend that any plan designed to achieve full funding will either “unduly and unfairly burden” employers with higher premiums, require the reduction of benefits or services for injured workers or both.

None of these positions is patently inconsistent with the actual language of either the former provisions or the recent amendments. However, some interpretations of “sufficiency” are more fiscally cautious than others and more consistent with the views expressed by the Auditor General and likely shared by those who drafted the recent amendments. Whether these latter views should prevail, whether deference should be paid to concerns about increased costs and diminished benefits, or whether some intermediate position can be identified is, of course, the crux of the issue facing this Funding Review.

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Finally, whatever funding ratio is ultimately deemed to be appropriate, if it is materially higher than the WSIB's recent funding range of 50-65%, it will be important to consider how rapidly the new ratio can and should be achieved. As a rule of thumb, the more rapid the increase in the funding target, the more likely it is to require relatively stringent measures; the slower the increase in the funding target, the more it is likely to be achievable through relatively modest adjustments in the WSIB's funding strategy.

### Key Questions:

1. What should the WSIB set as its funding target?
2. What is a reasonable time frame for the WSIB to reach its funding target, having due regard to the possible impact on premiums and/or benefits?

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### Issue 2: Premium rates

In principle premium rates should be set by the WSIB at a level high enough to at least ensure that it has sufficient funds to meet its current expenditures. However, each year since 2001, the WSIB has received less in premiums paid by employers than it has spent in benefits, administration costs and other required expenditures. Given its insufficient premium income, the WSIB has had to draw on its invested capital to meet its current financial obligations. With less capital, the WSIB has diminished capacity to generate investment returns, and therefore must rely more and more on premium income to meet its costs.

Moreover, the average premium rate has fallen while the UFL has been increasing. As the Auditor General noted in his 2009 report:

*"In 1996 the average premium rate was \$3 per \$100 of payroll...this was reduced to \$2.85 by 1997....Since then notwithstanding the UFL's upward trend, the average premium rate has been reduced multiple times, levelling out in 2006 at \$2.26 where it has remained through 2009."*

The Auditor General reported that if the average premium rate had remained at its 1996 level of \$3 per \$100 of insurable payroll the UFL would have been eliminated by 2006 despite benefit costs rising at an annual rate of 5% or more.

However, despite the considerable reduction in Ontario's average premium rate, it is still one of the highest in the country. While Ontario employers paid an average premium rate of \$2.30 per \$100 of payroll in 2010, their counterparts across Canada paid \$1.99. Employers in Alberta and B.C. paid much less — \$1.32 and \$1.56 respectively; Québec's average premium rate is \$2.19. Notwithstanding their lower rates, the compensation systems of all three provinces maintain funding ratios considerably higher than Ontario's.

Perhaps Ontario's high premium rates can be explained by the need to meet the costs of higher benefit levels and more expensive programs mandated by Ontario law or provided under WSIB policies. Perhaps they are attributable to the WSIB's administrative practices or its investment strategy. Or perhaps rapidly rising average benefit costs per new lost time injury (68% increase between 2003 and 2008) are to blame. All of these possibilities are being addressed by the WSIB either internally or *via* other arm's length studies it has commissioned in parallel with this Funding Review. However, the WSIB's own analysis suggests that Ontario's higher average premium rate is largely attributable to the fact that a significant portion of the revenue it receives in the form of premiums goes towards paying the costs of carrying the UFL. If the UFL did not exist, the WSIB believes Ontario's average 2010 premium rate would be about \$1.53 — very similar to rates in other provinces.

The Funding Review is in no position to investigate all possible explanations for Ontario's high average premium rate, or to recommend changes in the WSIB's administrative practices, *WSIA* benefit levels, increasing claims costs or other possible "drivers" of high rates. On the other hand, it has been asked to consider the WSIB's rate setting methodology and will do so. Among the issues that the Funding Review may consider:

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- Is premium rate setting a purely technical exercise driven by the WSIB's revenue requirements? Or does it involve elements of discretion?
- To what extent is rate setting influenced — positively or negatively — by the present statutory requirement that the WSIB “*not...burden unduly or unfairly any class of ... employers*”?
- What changes might have to be made in the rate setting methodology in light of statutory amendments requiring the WSIB to adopt and implement a “sufficiency” plan?

### Key Questions:

3. Is the current WSIB premium rate setting methodology appropriate? If not, what changes would improve it to ensure that premium revenue covers costs?
4. Should premium rates increase until the WSIB's funding target is reached?

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### Issue 3: Rate Groups

The workplace safety and insurance scheme is built on the principle of no-fault, collective responsibility by employers for injuries sustained or illnesses contracted in the course of employment. However, not all employers are treated alike:

- Businesses in certain significant sectors of Ontario's economy (such as financial services) are not covered by the *WSIA*; they employ about 30% of the provincial workforce.
- "Schedule 2" employers are self-insured and do not pay premiums to the WSIB, but rather reimburse it for benefits and services provided to their injured workers.
- While all other Ontario employers are covered under "Schedule 1", they do not all pay the same premium rate.

This section of the Green Paper explains why and how different premium rates are charged to Schedule 1 employers.

In order to ensure that low risk businesses do not have to subsidize high risk businesses, the WSIB attempts to match premium rates to the varying levels of injury risk presumably associated with different types of business activities and workplace hazards. This involves first, the assignment of each employer to one of 828 classification units based on the predominant nature of its business activities, and second, the bundling of these classifications into 154 rate groups whose members are engaged in similar businesses, exposed to similar risks or experience roughly similar claims costs.

Each rate group, in turn, is associated with one of nine industry classes, although businesses within these classes may pay very different premium rates:

- A. Forest Products
- B. Mining & Related Industries
- C. Other Primary Industries
- D. Manufacturing
- E. Transportation & Storage
- F. Retail & Wholesale Trades
- G. Construction
- H. Government & Related Services
- I. Other Services

A broadly similar system of classifications is used across Canada for premium rate setting purposes. However, Ontario's system is more complex than most. Consequently, the current rate group structure may well be more costly for the WSIB to administer and harder for everyone to understand, especially employers. Moreover, complexity not only leads to *bona fide* classification challenges but may perhaps tempt some employers to misrepresent the nature of their business so that they will be assigned to a rate group that is subject to a lower premium rate.

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Arguably, Ontario's rate group structure should be simplified. British Columbia, for example, has just 65 rate groups — approximately 40% of Ontario's. Consolidation of rate groups into a more manageable number, improvement of the methodology for assigning employers to one or the other, and associating each rate group more explicitly with levels of risk, rather than grouping industries based on similar business activities, might lead to more consistent adherence to the principle of collective liability, easier administration for employers and the WSIB, and greater transparency. On the other hand, fewer and larger rate groups might entail a higher degree of cross-subsidization among member firms, and lead to pressures by firms with good safety records for some form of individualized experience rating.

### Key Questions:

5. Is WSIB's rate group structure appropriate, given the principle of collective, no fault liability?
6. What opportunities exist to improve the rate group structure?

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### Issue 4: Employer incentive programs

The WSIB currently administers five different programs designed to provide financial incentives for employers to improve their injury experience, to promote positive health and safety practices, and to facilitate early and safe return to work for injured workers. In 2009, the net payout for all five programs was about \$50 million.

Three of these programs (described below) are experience-based. They provide rebates to employers with better-than-average claims experience and impose surcharges on those who incur higher claim costs and have more accidents than their peers. However while rebates and surcharges under comparable programs in other provinces usually cancel each other out, Ontario's experience-based incentive programs typically run a deficit or "off balance". Between 1994 and 2009, the WSIB cumulatively paid about \$2.5 billion dollars more in rebates than it collected in surcharges and generated off balances in every one of those years.

The three experience-based programs are:

- a. **MAP (Merit Adjusted Premium)** – MAP automatically increases or decreases an individual firm's premium rate based on its accident experience for the previous three years. It applies to 96,000 Schedule 1 firms whose WSIB premiums are less than \$25,000 per year. In 2009, about 75,000 of these firms received rebates while some 8,500 were subject to a rate surcharge. Rebates exceeded total surcharges by about \$14 million.
- b. **NEER (New Experimental Experience Rating)** – NEER automatically applies to firms (other than those in the construction sector) whose premiums exceed \$25,000 per year. Under NEER, firms receive a rebate or a surcharge based on their accident costs from the previous three years. In 2009, surcharges exceeded rebates by about \$24 million.
- c. **CAD-7 (Council Amended Draft #7)** – CAD-7 applies to firms in the construction sector whose annual WSIB premiums exceed \$25,000. As with the other two programs, firms receive an automatic refund or a surcharge based on their accident costs and frequency. In 2009, of the 6,200 or so firms in CAD-7, about 4,300 received rebates and 1,900 were surcharged. Rebates exceed surcharges by an estimated \$28 million.

These programs have been criticized not only because they generate "off balances" but for other reasons as well. First, accident costs and frequency are said to be unreliable measures of an employer's safety record. Second, experience-based incentives are said to unduly focus employer efforts on post-injury efforts to maintain a favourable claims record rather than on preventing accidents and reducing harm.

Third, there is little empirical evidence that experience rating and incentives actually reduce accident rates and improve return-to-work outcomes. Indeed, some critics contend that these programs provide perverse incentives for employers not only to under-report lost time injuries but to bring injured workers back to work before they have fully recovered, or to discharge them after the experience rating "window" closes but before the full extent of their disability has been ascertained. Some injured workers without job security or alternative

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prospects may feel obliged to collaborate in such practices to retain their jobs in the short-term.

If these criticisms are substantiated, such behaviour would not only have a significant negative effect on the WSIB's premium revenue stream but also would be highly prejudicial to injured workers. On the other hand, some employer groups believe that experience rating is an essential principle of any insurance scheme, that it produces the intended results, and that it must be maintained.

Finally, assuming that experience-based incentive programs are maintained, opinions differ as to whether employers who have earned a rebate should receive it in the form of a cash refund or by way of a discount on their next year's premium rate.

To complement its three experience-based programs, the WSIB has also introduced two incentive programs that are practice-based. These programs are voluntary and provide incentives in the form of rebates to employers that adhere to good occupational health and safety practices in the workplace, focus on controlling hazards to prevent accidents, and take effective measures to facilitate return to work by injured workers.

These practice-based incentive programs are:

- d. **SCIP (Safe Communities Incentive Program)** – SCIP targets small businesses, especially those that are newly-registered. Delivered through WSIB-funded Health and Safety Associations, it provides employers with occupational health and safety training to enable them to remain at zero injuries and/or illnesses. As it expands, SCIP will apply to all small businesses with annual WSIB premiums of less than \$90,000. A refund of up to 5% of the employer's annual premiums (to a maximum of \$4,500), is paid to employers that complete a safety assessment and training program. In 2009, SCIP cost the WSIB about \$1.2 million.
- e. **SGP (Safety Groups Program)** – SGP brings together networks of firms that seek to improve workplace safety through participation in specified group activities designed to reduce injuries and illnesses. At the end of each year, the group members are eligible for a premium rebate based on their collective success in implementing specific safety measures and improving their claims experience (measured by accident frequency and severity of lost time injuries). Outcomes are self-reported and randomly audited. In 2009, 3,712 employers participated in the program, and received a total of \$33 million in rebates.

Few studies are available to assess either the effectiveness or the integrity of SCIP or SGP.

The key question, of course, is whether either experience-based or practice-based incentive programs are having the desired impact on employer behaviour and worker health and safety. The Funding Review looks forward to receiving evidence and argument on this point.

## Funding Ontario's WSIB

### Key Questions:

7. Is the present design and operation of the WSIB's employer incentive programs appropriate? If not, how should they be changed?
8. What other incentives might be used to promote increased safety in the workplace and re-employment of injured workers while ensuring equitable treatment of employers and maintaining the WSIB's premium revenues?

## Funding Ontario's WSIB

### Issue 5: Funding for occupational disease claims

The *WSIA* funds compensation for both workplace-related injuries and occupational diseases (OD) in the same way — from the premiums charged to employers and revenues generated from its investments.

However, occupational diseases are the single most rapidly-growing source of claims and now account for about 9% of all claims costs — over \$350 million in 2009. OD claims also present the WSIB with unique challenges. Some diseases have long latency periods; symptoms may not be evident until many years after a particular workplace experience has ended; and some diseases may have a variety of causes, making it difficult to directly link them to conditions in a specific workplace.

These unique characteristics of OD claims present challenges to both the WSIB's rate setting practices and its funding policies. On the one hand, it is problematic to adhere to the present practice of adjusting employers' premium rates to reflect employer claims experience when diseases may be linked to specific workplace conditions only many years after the employment relationship has ended, and often only with the aid of newly-developed diagnostic techniques and epidemiological evidence. On the other, it is almost impossible for the WSIB to anticipate the potential magnitude of OD claims for diseases that have yet to be detected or even discovered, let alone to set premium rates to fund the unpredictable — but possibly considerable — costs of such claims. As noted earlier, while the WSIB has the authority to establish a special reserve fund earmarked for OD claims, it has not done so, though some other provincial systems have.

The uncertainties surrounding occupational diseases — what new diseases? What connections to the workplace? What future costs? How to fund them? — create potential long-term financial risks for Ontario's workplace insurance system.

#### Key Questions:

9. How should occupational disease claims be funded?
10. Should they be a collective liability for all employers or charged back to specific employers?
11. Should the WSIB establish a special fund for occupational disease claims?

## Funding Ontario's WSIB

### Issue 6: Indexation of partial disability benefits

Prior to 1985, indexation — adjustments to reflect increases in the cost of living — was provided to recipients of partial disability benefits *ad hoc* (if at all). However, legislation enacted in that year mandated the annual indexation of both full and partial disability benefits to fully reflect cost-of-living increases based on annual changes in the Consumer Price Index for Canada (CPI). Consequently, the anticipated cost of future indexation had to be included in the calculation of the WSIB's benefit entitlements. This, in turn, produced a significant increase in the UFL.

However, full indexation was modified by the introduction in 1995 of the so-called “Friedland formula” under which indexing of partial (but not full) disability benefit payments was reduced from 100% to 75% of CPI (e.g. from 4% to 3%) and then discounted by a further 1% (3% minus 1% discount = 2%) subject to the proviso that the indexing factor could not fall below 0% or exceed 4%. In 1998, the Friedland formula was modified by reducing the basic indexing factor for partial disability benefits from 75% to 50% of CPI (e.g. from 4% to 2% minus 1% discount = 1%). Each of these modifications reduced the purchasing power of benefits paid to partially disabled workers but also considerably reduced the WSIB's financial liabilities and therefore the UFL. About 150,000 benefit recipients are affected by the current indexing formula.

Recently, the Ontario Government has reverted to the former practice of *ad hoc* indexation. Specifically, in 2007, 2008 and 2009, indexation of partial disability benefits was set at 2.5%, a higher figure than either the original or modified Friedland formulas would have produced. For 2010, the rate was set at 0.5%.

Ontario's *WSIA* is the only workers' compensation statute in Canada that authorizes a provincial Government to increase indexing to a level that exceeds the standard set in the underlying legislation. It is also the only statute to establish different rates of indexing for fully and partially disabled workers, though some provinces provide full indexation for both, while others provide only partial indexation.

Changes in the indexation rate have a significant impact on the benefits received by injured workers, on the premiums paid by employers, and therefore ultimately on the UFL.

#### Key Questions:

12. Should the present indexation formula — that provides limited inflation protection for partially disabled workers — be replaced? And if so, by what?

### CONCLUSION

Ontario's workplace insurance system has for almost a century operated for the benefit of workers, employers and the whole community. However, there is a strongly-held view — expressed by the Auditor General, the WSIB and others — that the UFL represents a long-term threat to the financial sustainability of the system. At some level of funding — 10%? 50%? 90%? — this must surely be true. On the other hand, at what level, in which time frame and by what means that threat might actually materialize is a matter for careful analysis and public discussion.

The Funding Review will consult actuaries, economists and other experts in order to better understand the dangers posed by the UFL and to develop a well-informed analysis of the other issues it has been asked to investigate. But the Funding Review is not relying on experts alone. It is also opening up a public discussion of the issues assigned to it. It wants to hear — and needs to hear — from individual workers and employers, stakeholder organizations and other interested parties.

Ultimately — at the end of 2011 — the Funding Review will make recommendations concerning the six issues outlined in the previous sections of this Green Paper. Those recommendations are most likely to serve the interests of workers and employers, to elicit public approval and to be accepted by the WSIB, the Auditor General and the Ontario Government, if everyone who responds to this Green Paper, everyone who joins the discussion and who contributes to the Funding Review, approaches the issues with an open mind.

***Your opinions matter. Please share them with the Funding Review!***